

**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

In the Matter of the Protest of	)	
	)	DOCKET NO. 16279
	)	
[REDACTED],	)	DECISION
	)	
Petitioner	)	
_____	)	

On November 16, 2001, the Income Tax Audit Bureau (Bureau) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing additional individual income tax and interest in the amount of \$950 for the years ending December 31, 1998 and December 31, 1999.

The taxpayer filed a timely appeal and petition for redetermination. A conference was not requested; however, additional information was submitted. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

The Bureau selected the taxpayer's 1998 and 1999 Idaho individual income tax returns for review. Review of those returns showed the taxpayer claimed head of household filing status with one dependent each year. Because another taxpayer claimed the same child as a dependent, the Bureau asked the taxpayer to provide additional information to substantiate his right to claim the child as a dependent and to file as head of household.

The taxpayer did not respond to the request for additional information and a deficiency notice was sent to the taxpayer. In a letter dated January 12, 2002, the taxpayer explained that he and his ex-wife were sharing custody of their son. He enclosed a copy of a "Judgment and Decree of Divorce" and a copy of "Judgment and Order Modifying Child Support." The taxpayer's file was transferred to the Legal/Tax Policy Division for administrative review.

In response to a letter outlining the taxpayer's appeal rights, the taxpayer sent an additional letter of explanation and a copy of an executed "Federal Release of Claim to Exemption For Child of Divorced or Separated Parents," Form 8332. He explained that he had made an error in claiming head of household but that he did have the right to claim his child as a dependent as was demonstrated by the signed consent Form 8332.

In general, Internal Revenue Code (IRC) § 151 (c) allows a taxpayer an exemption for his "dependents." However when a child's parents are divorced, IRC § 152(e)(1) provides a special rule to determine which one of them is entitled to the dependency exemption. The Treasury Regulations § 1.152-4(b) provide that where the parents have "split" custody, custody "will be deemed to be with the parent who, as between both parents, has physical custody of the child for the greater portion of the calendar year."

An exception to these rules is provided in IRC § 152(e)(2), which allows the dependency exemption to the non-custodial parent when the custodial parent agrees to release the exemption. In that case, the non-custodial parent must obtain from the custodial parent a written declaration that he or she "will not claim such child as a dependent for any taxable year beginning in such calendar year" and attach the written declaration to his or her return. IRC § 152(e)(2).

The taxpayer provided a copy of his divorce decree as proof that he had joint custody and the right to claim his son as his dependent. However, he does not claim that his son lived with him for the greater part of either 1998 or 1999.

The taxpayer provided the Tax Commission with a copy of a federal Form 8332 that was signed in two places by the taxpayer's former wife. The form released her claim to the exemption of the child for the tax years "1999-2002" in the top portion of the form. In the bottom section of the

form, the taxpayer's former wife signed an agreement to not claim the exemption for the additional tax years of "2002-2009." There was no mention of tax year 1998. Nothing further has been submitted for review.

Based upon the information in the file and the applicable law, the Tax Commission finds the Notice of Deficiency Determination should be modified to allow the taxpayer the exemption for his son for tax year 1999. The Tax Commission upholds the Bureau's determination that the taxpayer's filing status for both years at issue was single. Furthermore, the taxpayer's right to claim the exemption for his son for 1998 is denied.

WHEREFORE, the Notice of Deficiency Determination dated November 16, 2001, is hereby MODIFIED and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$392	\$89	\$481
1999	190	29	<u>219</u>
		TOTAL	\$700

Interest is computed through April 1, 2002.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of taxpayer's right to appeal this decision is enclosed with this decision.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

IDAHO STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this \_\_\_\_\_ day of \_\_\_\_\_, 2002, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]  
[Redacted]

Receipt No. [Redacted]

\_\_\_\_\_  
ADMINISTRATIVE ASSISTANT 1